Supplement to

INFORMATION LETTER

NATIONAL CANNERS ASSOCIATION

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The Office of Price Stablization has indicated that CPR 42, the emergency vegetable price order, is the type of order that will subsequently be issued covering individual canned foods commodities.

It is assumed by the Association that CPR 42 will therefore be one of the main topics at the meetings in Washington June 12 and 13 of the Fruit and Vegetable Canners Industry Advisory Committee.

As an advance service to members of this committee to help them in their preparations for the meeting, and to the N.C.A. membership at large, Association's Counsel has prepared the following legal analysis of this important order.

CEILING PRICES FOR CERTAIN VEGETABLES OF THE 1951 SPRING PACK (CPR 42)

The recently issued Ceiling Price Regulation 42, prescribing price ceilings for the 1951 spring pack of asparagus, spinach, green beans, and other vegetable greens, constitutes the first effort of the Office of Price Stabilization to apply to the canning industry price control techniques specifically adapted to the problems encountered in the production and sale of seasonal canned foods. The pricing-formula pattern employed in CPR 42 is in many respects similar to that of Maximum Price Regulation No. 152, issued on May 23, 1942 by the old OPA. CPR 42 performs the similar function of removing canned vegetables from the general hold-the-line order applicable to all industries generally. The pricing principles employed in CPR 42 may well be followed in later OPS regulations prescribing tailored pricing ceilings for other canned fruits and vegetables and taking canned foods generally out from under the General Ceiling Price Regulation.

In its basic text CPR 42 is reasonably clear. The pricing methods to be employed are set out in considerable detail and in step-by-step fashion. Canners of the vegetables to which the Regulation applies should, therefore, be able readily to follow the text of the Regulation in computing their ceiling prices. A careful reading of the Regulation and the Statement of Considerations which accompanies it is urged upon canners as a basis for a fuller understanding of the purposes and applications of the methods prescribed.

CPR 42 became effective on May 31, the date of issuance, and is designed to apply price ceilings only to the 1951 spring pack of the listed vegetables; thus, the fall pack of such listed vegetables as spinach and green

beans will not be subject to the Regulation. The Statement of Considerations, however, states that the canned vegetables covered by CPR 42 are also being included in the study of pricing methods for canned fruits and vegetables generally, and it may be that the general vegetable regulation, which is expected to issue at some time in the near future, will supersede Regulation 42 in application to that part of the 1951 spring pack of the listed vegetables not already sold on firm commitments.

The Vegetables Covered by CPR 42

CPR 42 applies a formula pricing method to the 1951 spring pack of asparagus, spinach, and vegetable greens (other than spinach) in each of the 48 states. Green beans processed in a majority of the Southern States, each of which is listed in Section 1 of the Regulation, are also included.

CPR 42 was issued to meet the emergency situation created by the immediate need for removing those vegetables for which the packing season has already begun, or is shortly to begin, from the distorted pricing patterns produced by the General Ceiling Price Regulation. It therefore applies to the listed canned vegetables only if the major portion of the pack of any of the listed vegetables is canned before June 30, 1951. If the packing season meets this requirement, the Regulation applies to the entire spring pack of the vegetable, even though some canning may take place after June 30.

CPR 42 does not apply to any listed vegetable that is packed and sold as "baby food," as "junior food," or as "soup." It does, however, apply to the purees and the juices of any listed vegetables.

Items and Grades

The pricing technique to be employed involves a determination of separate ceilings for each "item" packed. A clear understanding of this term is necessary. "Item" means a kind, variety, grade, size or sieve size, style of pack, container type and size, of each vegetable. Any distinctions which can be drawn based on differences in these factors necessitates consideration of the product as a separate item. Brand names, however, are in themselves not to be considered as distinguishing one item from another.

Grade is intended to mean the commercial grade unless the canner has submitted his product for grading under the PMA grading system and sells the item under such grade designation, when, in such case, the PMA grade is to be the criterion. Distinctions may not be drawn, however, between "items" on the basis of subgrades of the same quality designation.

The Base Price

To establish a ceiling price for an item, a canner first determines his representative weighted average sales price or "base price" per dozen containers of the item sold during the base period at the canner level. This "weighted average sales price" or base price is the total gross sales dollars charged by the canner on an f.o.b. factory basis for that item during the period January 1 through June 30, 1950, divided by the number of dozens of containers of that item sold.

In computing the total gross sales dollars figure to be used in determining his "weighted average sales price," a canner includes only the proceeds of sales and confirmed sales contracts at firm prices of the 1950 pack of that particular item made in the regular course of business during the base period January 1 through June 30, 1950, regardless of whether deliveries pursuant to the contract were made after June 30, 1950. The total gross base period sales figure should not include:

(1) Deliveries made during the base period pursuant to contracts entered into <u>before</u> January 1, 1950, even though delivery was made during the base period;

(2) Sales at retail (sales to ultimate consumers other than commercial, industrial, and institutional users);

(3) Sales at wholesale (sales with respect to which the canner has performed the function of selling as a wholesaler to retail stores, but not including sales to chain store buying agencies or associations of retail store buying agencies which warehouse the product prior to distribution to the individual retail outlet);

(4) Sales to government procurement agencies;

(5) Sales to institutional, commercial and industrial users;

(6) Sales to state agencies and political subdivisions thereof; and

(7) Sales of damaged goods or goods packed for experimental purposes.

Necessarily, the quantities covered by these excluded sales do not enter into the calculation of the average base period price per dozen of each item.

Some canners may wish to determine a single base price for a group of factories located in the same pricing area. In such cases, CPR 42 permits a canner to figure his weighted average sales price for all of the factories "in the same pricing area" taken as a group. In other words, the canner adds together all of the includible sales at each of the factories in the group and calculates his base price in accordance with the procedure outlined for a single factory. It is important to observe the limitation that in order to treat a group of factories together for this purpose, all of them must be located in the same area both in Table I in Section 2(b) and Table II in Section 2(c), which respectively control the increases for materials other than the raw commodity and increases in raw material costs.

Base Price Adjustment for Increases Other than Raw Material

After obtaining his base price for the item, a canner adds to his base price an adjustment for permitted production cost increases other than raw material. This is computed by applying to the base price a stated percentage factor for defined processing areas. The percentage factor is designed to give recognition to increases in packaging costs, labor costs, warehouse costs, and similar direct production costs which have occurred since the end of the 1950 base period.

Section 2(b) of the Regulation lists these permitted cost increases by vegetable and by producing area. When a canner has applied to his base price the appropriate percentage factor for the area in which his factory is located, he then has his "adjusted base price."

The Permitted Raw Material Cost Increase

CPR 42 then permits a canner to add to his adjusted base price the actual amount of his raw material cost increase, provided that such increase does not exceed an amount based upon the 1951 "legal minimum" prices to growers of the vegetable. These maximum permitted increases in raw material costs are listed in two forms: as a maximum permitted increase in dollars per ton of the particular vegetable; and as a maximum permitted percentage increase to be applied against the canner's own individual 1950 weighted average raw material cost. The details of applying these are fully spelled immediately below.

If the canner's actual raw material cost increase (as determined by a comparison of his individual 1950 weighted average raw material cost per ton and his individual 1951 weighted average raw material cost per ton delivered at the factory up to the date on which he computes his ceiling price) exceeds <u>both</u> the maximum permitted increase in dollars per ton and the maximum permitted increase in terms of a percentage of his 1950 weighted average raw material cost, as listed in Table II, he may not apply his actual raw material cost increase as a price adjustment, but must select one of the two listed maximum increases. If his actual raw material cost increase exceeds only one of the two listed maximums, he may apply his actual cost increase as his raw material cost adjustment factor.

It will be seen, therefore, that in employing this method of limiting the amount of raw material cost increase which may be applied in computing a ceiling price, the Office of Price Stabilization has given effect to the U. S. Department of Agriculture "grower's legal minimum price" announcements, which have set out the method by which canners could determine the maximum prices they could pay their growers and still expect recognition of these price increases in future price regulations. As was true under the General Ceiling Price Regulation, there is no direct prohibition against the payment of raw material prices higher than the "legal minimum" level, but the canner's price ceiling will not take into account raw material cost increases which exceed these area maximums. Conversely, there is no requirement that the canner pay the maximum permitted increase to growers, but the canner may, in computing his ceiling price, give effect only to those increased raw material prices actually paid.

Section 2(c)(1) prescribes the method of computing for the years 1950 and 1951 the weighted average raw material cost per ton on which the individual canner's actual cost increase is to be calculated. It should be noted that in determining his 1951 weighted average raw material cost per ton, a canner includes in his computations only that raw material purchased or contracted for at a firm price up to the time at which he figures his ceiling price. In general, this weighted average includes all the costs of raw material acquisition, as listed in the second paragraph of Section 2(c)(1).

Since the permitted increase in raw material cost, as determined above, will be in terms of cost per ton of raw material, it will be necessary to convert this per ton cost increase to a base price increase per dozen containers. Section 2(c)(2) prescribes the method by which this is to be accomplished.

In general, the technique involves the use of an average yield of finished product per ton of raw material based on the individual canner's experience in packing that particular vegetable during the years 1948, 1949, and 1950, as adjusted for grade yield distribution. If the canner packed the particular grade of the product during any one of the three preceding years, he will have a basis on which he can convert his permissible raw material cost increase per ton to a permissible increase per dozen containers of the finished product. This increase added to the base price adjusted for cost increases other than raw materials will give the canner his ceiling price on that item expressed in dollars and cents per dozen containers f.o.b. factory.

Since a canner's actual raw material cost increase is to be determined on the basis of purchases only up to the date on which he computes his ceiling price, and subsequent raw material cost increases may take place following this computation, CPR 42 permits a canner to <u>recalculate</u> his ceiling prices currently as the packing season progresses. This privilege of recalculation will be available, of course, only if the canner's cost increase is not in excess of the maximum permitted increases prescribed in Table II. In refiguring his ceiling prices under this provision, the canner must base his calculations on <u>all</u> raw material purchased or contracted to be purchased at a firm price during the 1951 season up to the date on which he refigures his ceiling prices. The recalculated ceiling price so obtained may be applied to all canned foods not already sold on a firm contract.

Special Cases

Many canners will be able to calculate their ceiling prices on the basis of the procedures outlined above. Others, however, due to special circumstances surrounding their methods of procuring raw material or because of their inability to calculate certain factors necessary to the computations, will be required to resort to the special pricing provisions contained in Sections 3, 4, 5 and 6 of the Regulation.

Special provisions are also included for canners accustomed to selling the item on the basis of uniform f.o.b. factory prices for factories in different pricing areas, on the basis of delivered prices, or on the basis of uniform delivered prices by zones or areas. These may be found in Sections 8, 9, and 10 of the Regulation.

Canner-Growers and Open-End Contract Purchasers

A canner-grower, who, either in the base period or during the current packing season, has processed raw material grown by him exclusively, will be unable to calculate his permissible raw material cost increase by application of Section 2 because he has no firm contract price for raw material during one or both of the two processing periods on which his average cost increase can be determined. This will also be true for canners who have made all of their purchases during either the base period or during the 1951 season under "open-price" or deferred payment contracts which relate the price to be paid for the raw material to the eventual selling prices or other facts not ascertainable at the time of pricing.

Such canners are required by Section 3 to borrow the permitted raw material cost increase per ton of the most nearly adjacent canner in the same raw material area (as determined by reference to Table II) who receives

deliveries of a like quality of the material in the same quantity units at firm prices. Adjustments of this borrowed raw material cost increase per ton factor to obtain a raw material cost increase per dozen containers must be made on the basis of the individual canner's own experience with grade and container yields during the three preceding years.

Grower-Owned Cooperatives

Grower-owned cooperatives which, either during the 1950 or 1951 seasons, have not purchased any of their raw materials from independent growers wholly unaffiliated with them, will also be unable to compute their permissible raw material cost increase under Section 2 of the Regulation. Instead of borrowing a competitor's cost increase, however, such cooperatives will apply as their raw material cost increase per ton factor the higher of either the dollar maximum increase permitted by Table II or the figure obtained by multiplying the amount per ton returned to their growers of that item in 1950 by the percentage maximum raw material cost increase in that Table.

There is the further requirement that the entire raw material cost increase so computed be passed back to the growers who own the cooperative within 30 days after the end of the cooperative's normal accounting period. Section 4(b) sets out in detail the method by which cooperatives shall compute the amount which must be passed back to growers under this requirement. Cooperatives pricing under this Section must submit the computations on which their raw material cost adjustments are based within 30-60 days following the end of each normal accounting period.

Canners Without Base Period Sales of the Item - New Container Types or Sizes

A canner who has made no base period sales of the item will be unable to price that item under any of the preceding Sections. He may still be able, however, to determine a selling price for that item if he has sold during the base period a requisite number of other items of a similar nature which he can employ for comparison purposes.

The first of these comparative pricing situations is presented when a canner has sold during the base period the same kind, variety, grade, style of pack, size or sieve-size of the particular vegetable, but in container types or sizes differing from the item to be priced. From among these items differing only in this respect, he may select the item (which must be one for which he has figured a ceiling price) of the most similar container type and most closely approximating the item to be priced in container size. The item selected may not be more than 50 percent larger or 50 percent smaller in size than the item to be priced.

By a series of mathematical computations set out in Section 5(a) of the Regulation, the canner subtracts from the ceiling price for the comparison item that portion of the ceiling price properly allocable to the costs of the container in which the comparison item is packed, adjusts the resultant figure to allow for the difference in the quantity of the contents of the vegetable to be packed in the containers of different sizes, and adds to this figure the allocable costs of the containers of the new type or size. This method of computing a ceiling price will allow for differences in the direct cost of the two

container types or sizes, but will require the canner to maintain the same price ceiling with respect to the container contents.

Items Which Differ Only in Grade

If a canner has not sold a particular item during the base period, but is able to calculate ceiling prices for a sufficient number of items of the same vegetable differing only in grade and container size, he may by construction of mathematical ratios determine a ceiling price for that item. Before he can proceed in this fashion, however, he must be able to figure ceiling prices for one item differing only in grade from the item being priced, for another item differing only in container size from the item being priced, and a third item combining both of the variations of the other two comparison items from the item to be priced.

Section 5(b) of the Regulation describes the method by which this may be accomplished. The following will serve as an illustration of the method of carrying out this ratio comparison. Assuming that a canner wishes to calculate a ceiling price for a No. 2 can of Fancy Spinach: He finds that he can compute ceilings for a No. 2 can of Standard Spinach, a No. 2½ can of Fancy Spinach, and a No. 2½ of Standard Spinach. The ratio of ceiling prices will be as follows:

$$\frac{\text{No. 2 can Fancy}}{\text{No. 2 can Standard}} = \frac{\text{No. } 2\tfrac{1}{2} \text{ can Fancy}}{\text{No. } 2\tfrac{1}{2} \text{ can Standard}}$$

The arithmetic for determining actual prices from these ratios is abundantly demonstrated in Section 5(b) of the Regulation.

Items Which Differ Only In Size or Sieve-Size of Content

The principle applied in computing a ceiling price for an item, which differs only in grade from items for which ceilings have been computed, may also be applied to determine a ceiling price for an item which differs only in size or sieve-size of content from items for which price ceilings have been computed. In this case, Section 5(c) provides that if the item to be priced were a No. 2 can of Sieve-Size 3 Green Beans, the ratio might be as follows:

$$\frac{\text{No. 2 can - Size 3}}{\text{No. 2 can - Size 5}} = \frac{\text{No. 303 can - Size 3}}{\text{No. 303 can - Size 5}}$$

Ceilings when None of the Preceding Methods Are Applicable

Some canners may not be able to apply any of the pricing methods discussed above to their own situation. In that event, a canner must either borrow as his ceiling price the average of the ceiling prices of his three nearest competitors in the same pricing area or apply to the Office of Price Stabilization for an individual authorization of a ceiling.

A canner who makes use of his competitor's price ceilings to determine his own ceiling price on a particular item must take as his ceiling the simple average of the ceiling prices, for the same item, of the three canners located nearest his factory and in the same pricing area. In order to be considered as

within the same pricing area, these canners must be both within the same area for permitted increases other than raw material (as determined by reference to Table I) and within the same area for maximum permitted increases in raw material cost (as determined by reference to Table II).

In the event that a canner is unable to secure the ceiling prices of the three canners located nearest his factory, he must apply to the Office of Price Stabilization for an individual authorization of a ceiling price under Section 7 for each factory or group of factories at which he processes the item. A canner may also apply for an individually-authorized ceiling price under Section 6, if he believes that the average ceiling price of the three canners located nearest him is, because of differences in merchandising methods or other factors, not representative of the competitive price level at which he has customarily sold his products in relation to theirs. This section sets out the information which must be submitted along with such application.

If a canner applies for an individual ceiling price authorization because he cannot determine his ceiling price for an item under any other provisions of the Regulation, the ceiling price he proposes to adopt in such application will be considered as authorized 30 days after the application (or any additional information that may be requested by the Office of Price Stabilization) has been mailed, unless, within that time, the applicant has received notice from OPS that his proposed price has been rejected. Section 7 of the Regulation sets out in detail the information which must accompany this application.

Uniform f.o.b. Factory Prices for Factories in Different Pricing Areas

Some canners may wish to continue their usual practice of pricing on a uniform f.o.b. factory basis the production of factories located in different pricing areas (as determined from Tables I and II). This situation should be distinguished from the situation where a canner wishes under Section 2 to compute one "base price" for any group of factories, all of which are located in the same pricing area.

Section 8 of CPR 42 authorizes the continuance of such uniform f.o.b. factory prices for all of the areas in which the canner had uniform prices in effect during 1950. The canner determines his uniform f.o.b. factory price by computing an appropriate weighted average of the separate ceiling price of each of his factories. This is accomplished by estimating the total gross sales dollars, based on 1950 production, which would be derived from sales of the canner's total production at the individual ceiling prices otherwise applicable to each factory and dividing this figure by the total number of dozens of the item included in the canner's 1950 total production.

If the canner at any time takes advantage of the provision of Section 2 permitting him to recalculate his sales price for a particular item on the basis of increased raw material cost, he must then, under Section 8, recompute his weighted average ceiling price to obtain a new uniform ceiling price for the group of factories.

Delivered Prices and Sales from Shipping Points Other than Factories

If, during the base period, a canner regularly sold an item to a purchaser on a delivered price basis, he may figure a delivered ceiling price by adding to his f.o.b. factory ceiling price the amount of the current 1951 transportation charges per sales unit of that item. He may also, if he sold during 1950 all or any portion of an item from a shipping point other than the factory where the item was packed, continue to sell from this shipping point at a ceiling equal to his f.o.b. factory ceiling plus the current transportation cost per sales unit from the factory to that shipping point. This latter privilege of adding to his factory ceiling the transportation cost to the shipping point is available to a canner, however, only if he has, in computing his base price, subtracted from his base period sales price the transportation costs incurred during the base period in shipping the item from its factory of origin to the shipping point.

Uniform Delivered Pricing by Zones or Areas

CPR 42 also permits a canner who has sold or delivered an item during 1950 on an estiblished uniform delivered price basis by zones or areas to continue this pricing practice or even to apply this pricing technique to an additional item not sold during 1950 on such uniform delivered price basis.

If the item has been sold during 1950 on this basis, a delivered ceiling price for the same zone or area for the same item may be computed by adding to the canner's f.o.b. factory ceiling price an average transportation charge figured on the same basis as the canner figured such charge during 1950, but at current 1951 transporation rates. For items not previously sold on a uniform delivered price basis, the canner adds to his f.o.b. factory ceiling for the item transportation charges mathematically proportional by shipping weight to the charges which were added to an item of the nearest shipping weight sold on a uniform delivered price basis in 1950.

A canner may also, if he priced in this fashion in 1950, continue to sell an item from two or more factories on an established uniform delivered price basis by zones or areas, regardless of the factories from which the shipment was made. In this case, however, the uniform delivered ceiling price must be based on a weighted average of the delivered ceiling prices applicable to the items produced at each factory.

Special Packing Expenses

CPR 42 permits a canner to add to his ceiling price the additional packing costs involved in meeting special written requirements of the buyer. Section 12 of the Regulation sets out in detail the conditions under which these special packing expenses may be reflected in the ceiling prices, the methods of computing these additional costs, and the special invoice or recordkeeping requirements involved.

Customary Discounts and Price Differentials

Once a price ceiling for a particular item has been obtained, that price remains the ceiling on that item in respect to all subsequent sales. The

canner must, however, apply against that ceiling, in determining his sales price, all allowances, discounts, or other price differentials customarily afforded to a purchaser or a class of purchaser, if a change in these practices would result in a price to that purchaser or class higher than he would otherwise obtain. The prohibition against changing any customary allowance or price differential does not, however, require any canner to continue to sell any item unlabeled or under a buyer's label, merely because that has been his practice with respect to an individual or class of customers in the past.

Adjustable Pricing

The general rule is that once delivery of the item is made to a customer, no further adjustments of the price may be made based on subsequent increases in the ceiling price for that item. Thus, while a canner may agree to sell an item at a price which may be increased up to the ceiling price which may be in effect at the time of delivery of the item, no agreements for subsequent adjustments may be entered into. Two exceptions to this rule exist. If a canner has applied for a change in the applicable ceiling price under Section 6 and the Office of Price Stabilization has specifically authorized the applicant to make delivery at a price dependent upon the action to be taken on the pending application, he may make deliveries subject to later determination of the price. If a canner is unable to determine the ceiling price through any method other than by individual authorization of a ceiling price by the Office of Price Stabilization, he may, after filing an application for a ceiling price, deliver the item at a price to be determined by action on the application, provided he does not receive payment for the delivery until the ceiling price has been authorized.

Miscellaneous Provisions

CPR 42 contains many provisions designed to guide canners in the application of the Regulation to special situations or to indicate the method of treating special factors such as taxes or storage costs. Canners are urged to study these provisions carefully to determine whether the provisions are applicable to their own operations.

Record Keeping and Filing Requirements

Attention is called to the fact that CPR 42 requires all canners to make and preserve for examination by the Office of Price Stabilization for a period of at least two years all of their customary pricing records, and, further, to preserve for a more extended period the records which were employed as a basis for the canner's ceiling price computations.

Canners are also required to submit to the Office of Price Stabilization within 10 days after the ceiling is computed certain pricing information set out in Section 18 of the Regulation.

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